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NATIONAL PAYMENT SYSTEMS LLC and
NATIONAL PAYMENT SYSTEMS OR, LLC
d/b/a ONE CONNECT PROCESSING

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LOUIS FLOYD and TERRY
FABRICANT, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

FIRST DATA MERCHANT
SERVICES LLC, et al.,

Defendants.

Case No.: 5:20-cv-02162-NC

Assigned to
Magistrate Judge:
Honorable Nathanael Cousins
Courtroom 5, 4th Floor

**ANSWER AND AFFIRMATIVE
DEFENSES BY NATIONAL
PAYMENT SYSTEMS OR, LLC
d/b/a ONE CONNECT
PROCESSING TO PLAINTIFFS'
COMPLAINT**

Complaint Filed: March 30, 2020
Trial Date: Not Set

For its answer to the Complaint of Louis Floyd and Terry Fabricant,
Defendant National Payment Systems LLC OR, LLC d/b/a One Connect Processing
states and responds as follows:

I. "INTRODUCTION"

1. Defendant admits that the case purports to arise from the TCPA, but
otherwise denies the allegations.

2. Denied.

Case No.: 5:20-cv-02162-NC

**ANSWER AND AFFIRMATIVE DEFENSES BY NATIONAL PAYMENT
SYSTEMS OR, LLC D/B/A ONE CONNECT PROCESSING TO PLAINTIFFS'
COMPLAINT**

3. Denied.

4. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 4 and on that basis, denies them.

5. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 5 and on that basis, denies them.

6. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 6 and on that basis, denies them.

7. Denied.

II. "PARTIES"

8. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 8 and on that basis, denies them.

9. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 9 and on that basis, denies them.

10. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 10 and on that basis, denies them.

11. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 11 and on that basis, denies them.

12. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 12 and on that basis, denies them.

13. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 13 and on that basis, denies them.

14. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 14 and on that basis, denies them.

15. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 15 and on that basis, denies them.

16. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 16 and on that basis, denies them.

17. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 17 and on that basis, denies them.

18. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 18 and on that basis, denies them.

19. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 19 and on that basis, denies them.

20. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 20 and on that basis, denies them.

21. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 21 and on that basis, denies them.

22. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 22 and on that basis, denies them.

23. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 23 and on that basis, denies them.

24. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 24 and on that basis, denies them.

25. Admitted.

26. Denied.

27. Admitted.

28. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 28 and on that basis, denies them.

29. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 29 and on that basis, denies them.

30. Admitted.

31. Denied.

32. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 32 and on that basis, denies them.

III. “JURISDICTION AND VENUE”

33. Denied.

34. Admitted.

35. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 35 and on that basis, denies them.

36. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 35 and on that basis, denies them.

IV. “FACTS”

37. Insofar as the allegation purports to quote a statute, no response is required, and the allegation is denied. Otherwise denied.

38. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 38 and on that basis, denies them.

39. Denied.

40. Insofar as the allegation purports to quote a statute, no response is required, and the allegation is denied. Otherwise denied.

41. Insofar as the allegation purports to quote a statute, no response is required, and the allegation is denied. Otherwise denied.

42. Insofar as the allegation purports to quote a published case, no response is required, and the allegation is denied. Otherwise denied.

43. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 43 and on that basis, denies them.

44. Insofar as the allegation purports to quote the FCC, no response is required, and the allegation is denied. Otherwise denied.

45. Denied.

46. Denied.

47. Insofar as the allegation purports to quote the FCC, no response is required, and the allegation is denied. Otherwise denied.

1 48. Denied.

2 49. Insofar as the allegation purports to quote the FTC, no response is
3 required, and the allegation is denied. Otherwise denied.

4 50. Insofar as the allegation purports to quote the FTC, no response is
5 required, and the allegation is denied. Otherwise denied.

6 51. Denied.

7 52. Denied.

8 53. Denied.

9 54. Denied.

10 55. Denied.

11 56. Denied.

12 57. Denied.

13 58. Denied.

14 59. Denied.

15 60. Denied.

16 61. Denied.

17 62. Defendant lacks sufficient knowledge or information to form as belief
18 as to the truth of the allegations of paragraph 62 and on that basis, denies them.
19 Otherwise denied.

20 63. Defendant lacks sufficient knowledge or information to form as belief
21 as to the truth of the allegations of paragraph 63 and on that basis, denies them.
22 Otherwise denied.

23 64. Defendant lacks sufficient knowledge or information to form as belief
24 as to the truth of the allegations of paragraph 64 and on that basis, denies them.
25 Otherwise denied.

26 65. Denied.

27 66. Admitted that a lawsuit as described was filed. Otherwise denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 73 and on that basis, denies them. Otherwise denied.

74. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 74 and on that basis, denies them. Otherwise denied.

75. Denied.

76. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 76 and on that basis, denies them. Otherwise denied.

77. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 77 and on that basis, denies them. Otherwise denied.

78. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 78 and on that basis, denies them. Otherwise denied.

79. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 79 and on that basis, denies them. Otherwise denied.

1 80. Defendant lacks sufficient knowledge or information to form as belief
2 as to the truth of the allegations of paragraph 80 and on that basis, denies them.
3 Otherwise denied.

4 81. Defendant lacks sufficient knowledge or information to form as belief
5 as to the truth of the allegations of paragraph 81 and on that basis, denies them.
6 Otherwise denied.

7 82. Defendant lacks sufficient knowledge or information to form as belief
8 as to the truth of the allegations of paragraph 82 and on that basis, denies them.
9 Otherwise denied.

10 83. Defendant lacks sufficient knowledge or information to form as belief
11 as to the truth of the allegations of paragraph 83 and on that basis, denies them.
12 Otherwise denied.

13 84. Defendant lacks sufficient knowledge or information to form as belief
14 as to the truth of the allegations of paragraph 84 and on that basis, denies them.
15 Otherwise denied.

16 85. Defendant lacks sufficient knowledge or information to form as belief
17 as to the truth of the allegations of paragraph 85 and on that basis, denies them.
18 Otherwise denied.

19 86. Defendant lacks sufficient knowledge or information to form as belief
20 as to the truth of the allegations of paragraph 86 and on that basis, denies them.
21 Otherwise denied.

22 87. Denied.

23 88. Defendant lacks sufficient knowledge or information to form as belief
24 as to the truth of the allegations of paragraph 88 and on that basis, denies them.
25 Otherwise denied.
26
27

1 89. Defendant lacks sufficient knowledge or information to form as belief
2 as to the truth of the allegations of paragraph 89 and on that basis, denies them.
3 Otherwise denied.

4 90. Defendant lacks sufficient knowledge or information to form as belief
5 as to the truth of the allegations of paragraph 90 and on that basis, denies them.
6 Otherwise denied.

7 91. Defendant lacks sufficient knowledge or information to form as belief
8 as to the truth of the allegations of paragraph 91 and on that basis, denies them.
9 Otherwise denied.

10 92. Defendant lacks sufficient knowledge or information to form as belief
11 as to the truth of the allegations of paragraph 92 and on that basis, denies them.
12 Otherwise denied.

13 93. Defendant lacks sufficient knowledge or information to form as belief
14 as to the truth of the allegations of paragraph 93 and on that basis, denies them.
15 Otherwise denied.

16 94. Defendant lacks sufficient knowledge or information to form as belief
17 as to the truth of the allegations of paragraph 94 and on that basis, denies them.
18 Otherwise denied.

19 95. Denied.

20 96. Defendant lacks sufficient knowledge or information to form as belief
21 as to the truth of the allegations of paragraph 96 and on that basis, denies them.
22 Otherwise denied.

23 97. Defendant lacks sufficient knowledge or information to form as belief
24 as to the truth of the allegations of paragraph 97 and on that basis, denies them.
25 Otherwise denied.

1 98. Defendant lacks sufficient knowledge or information to form as belief
2 as to the truth of the allegations of paragraph 98 and on that basis, denies them.
3 Otherwise denied.

4 99. Defendant lacks sufficient knowledge or information to form as belief
5 as to the truth of the allegations of paragraph 99 and on that basis, denies them.
6 Otherwise denied.

7 100. Defendant lacks sufficient knowledge or information to form as belief
8 as to the truth of the allegations of paragraph 100 and on that basis, denies them.
9 Otherwise denied.

10 101. Defendant lacks sufficient knowledge or information to form as belief
11 as to the truth of the allegations of paragraph 101 and on that basis, denies them.
12 Otherwise denied.

13 102. Defendant lacks sufficient knowledge or information to form as belief
14 as to the truth of the allegations of paragraph 102 and on that basis, denies them.
15 Otherwise denied.

16 103. Defendant lacks sufficient knowledge or information to form as belief
17 as to the truth of the allegations of paragraph 103 and on that basis, denies them.
18 Otherwise denied.

19 104. Defendant lacks sufficient knowledge or information to form as belief
20 as to the truth of the allegations of paragraph 104 and on that basis, denies them.
21 Otherwise denied.

22 105. Denied.

23 106. Denied.

24 107. Denied.

25 108. Defendant lacks sufficient knowledge or information to form as belief
26 as to the truth of the allegations of paragraph 108 and on that basis, denies them.
27 Otherwise denied.

109. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 109 and on that basis, denies them. Otherwise denied.

110. Denied.

111. Denied.

112. Denied. Further, Defendant denies the allegations of each of sub-items (a) – (h).

113. Denied.

114. Denied.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Defendant lacks sufficient knowledge or information to form as belief as to the truth of the allegations of paragraph 125 and on that basis, denies them. Otherwise denied.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

1 131. Denied.

2 132. Denied.

3 133. Denied.

4 **V. “CLASS ACTION ALLEGATIONS”**

5 134. Defendant admits that Plaintiffs purports to bring this action on behalf
6 of themselves and a class of others, but denies that certification of the class is
7 appropriate. Defendant further admits that Plaintiffs purport to define the class as
8 alleged, but denies that the definition is appropriate and further denies that class
9 certification is justified. Otherwise denied.

10 135. Denied.

11 136. Denied.

12 137. Denied.

13 138. Denied.

14 139. Denied.

15 140. Denied.

16 141. Denied.

17 142. Denied.

18 143. Denied.

19 144. Denied.

20 145. Denied.

21 146. Denied.

22 147. Denied.

23 148. Defendant lacks sufficient knowledge or information to form as belief
24 as to the truth of the allegations of paragraph 148 and on that basis, denies them.
25 Otherwise denied.

26 149. Denied.

27 150. Denied.

151. Denied.

152. Denied.

VI. “FIRST CLAIM FOR RELIEF”

153. Defendant realleges and incorporates by reference each and every response set forth in the preceding paragraphs.

154. Denied.

155. Denied.

156. Denied.

VII. “PRAYER FOR RELIEF”

157. Defendant denies that Plaintiffs are entitled to any relief sought in their Prayer for Relief. Additionally, Defendant denies all of the allegations of the Complaint not specifically admitted above.

AFFIRMATIVE DEFENSES

158. Without admitting any of Plaintiffs’ allegations or conceding the burden of proof as to any issue found to be an element of any cause of action, or any relief requested by Plaintiffs, Defendant alleges the following Affirmative Defenses:

First Affirmative Defense

159. Plaintiffs fail to state a claim upon which relief may be granted.

Second Affirmative Defense

160. Plaintiffs’ claims are barred, in whole or in part, because Plaintiff or Plaintiffs settled such claims either in whole or in part.

Third Affirmative Defense

161. Plaintiffs’ claims are barred, in whole or in part, because Plaintiffs consented to the receipt of the alleged calls.

Fourth Affirmative Defense

162. Plaintiffs’ claims are barred, in whole or in part, because of the good faith belief of Defendant that consent was provided by Plaintiffs.

Fifth Affirmative Defense

163. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs' numbers are business phone numbers.

Sixth Affirmative Defense

164. Plaintiffs' claims are barred, in whole or in part, because the sales calls in question were business to business calls.

Seventh Affirmative Defense

165. Plaintiffs' claims are barred, in whole or in part, because the calls were not made with equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator to dial such numbers.

Eighth Affirmative Defense

166. Plaintiffs' claims are barred, in whole or in part, because soundboard technology is permitted by the TCPA.

Ninth Affirmative Defense

167. Plaintiffs' claims are barred, in whole or in part, because of Defendant's good faith belief that consent was provided by Plaintiffs.

Tenth Affirmative Defense

168. Plaintiffs' claims are barred, in whole or in part, to the extent that the damages or injury allegedly suffered by Plaintiffs was the proximate result of acts or omissions by Plaintiffs.

Eleventh Affirmative Defense

169. Plaintiffs' claims are barred, in whole or in part, to the extent that the damages or injury allegedly suffered by Plaintiffs was the proximate result of acts or omissions by persons other than Defendant or Defendants.

Twelfth Affirmative Defense

170. Plaintiffs' claims are barred, in whole or in part, to the extent that the Defendant or Defendants did not place the calls in question.

Thirteenth Affirmative Defense

171. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs knowingly and voluntarily assumed any and all risks associated with the matters alleged in the Complaint and, pursuant to the doctrines of assumption of risk and/or informed consent, such conduct bars, in whole or in part, the damages that Plaintiffs seek to recover herein.

Fourteenth Affirmative Defense

172. Plaintiffs' claims are barred, in whole or in part, because the alleged calls at issue are excepted from and/or do not fall within the purview of the TCPA.

Fifteenth Affirmative Defense

173. Plaintiffs' claims are barred, in whole or in part, because Defendant or Defendants' role, if any, in the making of the alleged calls falls under the common carrier exception.

Sixteenth Affirmative Defense

174. Plaintiffs' claims are barred by the doctrine of waiver to the extent Plaintiffs voluntarily relinquished their rights to object to receiving the complained about calls.

Seventeenth Affirmative Defense

175. Plaintiffs are estopped by their own conduct from asserting the claims alleged in the Complaint.

Eighteenth Affirmative Defense

176. Plaintiffs' claims are barred to the extent that they failed to mitigate damages.

Nineteenth Affirmative Defense

177. Plaintiffs' claims are barred to the extent they caused aspects of any purported phone calls to be made by trick.

Twentieth Affirmative Defense

178. Plaintiffs' claims are barred insofar as Defendant and Defendants are not and cannot be vicariously liable for any purported phone calls.

Twenty-First Affirmative Defense

179. Any award of punitive or statutory damages against Defendant and Defendants would be unconstitutional under the United States Constitution as violative of the Due Process Clause of the Fourteenth Amendment and the Excessive Fines Clause of the Eighth Amendment.

Twenty-Second Affirmative Defense

180. Plaintiffs' claims are barred, in whole or in part, to the extent that they were not charged for the subject call or calls.

DEMAND FOR A JURY TRIAL

Defendant demands a jury trial

REQUEST FOR RELIEF

WHEREFORE, Defendant prays for an order dismissing all claims against it with prejudice, for an award of attorneys' fees and costs to the extent provided by any applicable provision of law, and for such other relief as the Court deems just and equitable.

Dated: April 22, 2020

KUTAK ROCK LLP

By: /s/ Rebecca L. Wilson

Rebecca L. Wilson
Attorneys for Defendants,
NATIONAL PAYMENT
SYSTEMS LLC and NATIONAL
PAYMENT SYSTEMS OR, LLC
d/b/a ONE CONNECT
PROCESSING

PROOF OF SERVICE

Louis Floyd, et al. v. First Data Merchant Services LLC, et. al.
United States District Court – Northern District
Case No.: 5:20-CV-02162

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Irvine in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 5 Park Plaza, Suite 1500, Irvine, California 92614-8595.

On **April 22, 2020**, I served on all interested parties as identified on the below mailing list the following document(s) described as:

**ANSWER AND AFFIRMATIVE DEFENSES BY NATIONAL PAYMENT
SYSTEMS OR, LLC d/b/a ONE CONNECT PROCESSING TO
PLAINTIFFS' COMPLAINT**



(BY NOTICE OF ELECTRONIC FILING) Counsel who have consented to electronic service have been automatically served by the Notice of Electronic Filing, which is automatically generated by CM/ECF at the time said document(s) was(were) filed, and which constitutes service pursuant to FRCP 5(b)(2)(D).

SEE ATTACHED SERVICE LIST

[X] **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction service was made.

Executed on **April 22, 2020**, at Irvine, California.



Mary Clark

SERVICE LIST

Louis Floyd, et al. v. First Data Merchant Services LLC, et. al.
 United States District Court – Northern District
 Case No.: 5:20-CV-02162

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